

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 September 2005

CASE NO.: 2004-CLA-00016

In the matter of

ELAINE CHAO, Secretary of Labor
UNITED STATES DEPARTMENT OF LABOR
Plaintiff

v.

BETWEEN ROUNDS, INCORPORATED, d/b/a
BETWEEN ROUNDS and GERALD PUIIA and
JOSEPH PUIIA
Respondents

DECISION AND ORDER APPROVING CONSENT FINDINGS

This proceeding arises under Section 16(e) of the Fair Labor Standards Act, as amended, 29 U.S.C. 216(e), and the implementing regulations at 29 C.F.R. Part 579 and 580. This matter results from an Order of Reference filed by the Administrator of the United States Department of Labor's Wage and Hour Division, on April 14, 2004. The Administrator imposed a civil money penalty in the amount of \$2,640.00 upon the Respondents for alleged violation of the Act and applicable regulations. The matter is before me for hearing and final determination of the issues raised by Respondent's timely exception to the notice of civil money penalty assessed by the authorized representative of the Secretary of Labor.

On September 29, 2005 the parties submitted the following Consent Findings pursuant to 29 C.F.R. Part 18.9 to settle the matter:

I

By notices dated December 9, 2003 and January 21, 2004, pursuant to Section 16(e) of the Fair Labor Standards Act, as amended, (29 C.F.R. 216(e))¹, and in accordance with 29 C.F.R. Part 579, a civil money penalty in the amount of \$2,640.00 was assessed by plaintiff against respondents as a result of the employment of minors in violation of the child labor provisions of Section 12 of the Act (29 U.S.C. 212) and the regulations issued thereunder (29 C.F.R. Part 570).

¹ It appears that this reference in the parties' Consent Findings should correctly be 29 U.S.C. 216(e).

II.

By letter dated December 12, 2003, respondents filed a timely exception to the assessed civil money penalty pursuant to 29 U.S.C. 216(e) and 29 C.F.R. 580.6. The first Assessment of the Civil Money Penalty was mailed to the respondents on December 9, 2003 stating that two (2) minors were found to be allegedly employed in violation of the child labor provisions of the Act. On January 21, 2004, Wage & Hour issued a second Assessment of Civil Money Penalty as a result of the same investigation amending form WH-103 Notice to Employer of the Employment of Minors Contrary to the Fair Labor Standards Act to add two minors, who were alleged to be employed in violation of the Hazardous Occupation Orders. The second assessment did not alter the original civil money penalty assessment.

III.

Subsequent to the filing of the exception, the Regional Solicitor for Region I, United States Department of Labor, by Order of Reference, referred this case on April 14, 2004, to the Chief Administrative Law Judge of the Department, pursuant to 29 C.F.R. 580.10.

IV.

Plaintiff alleges and Respondents admit that at all times pertinent hereto, they have been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(r) and 3(s) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(r) and 203(s)).

V.

Respondents certify that they are presently in compliance with the child labor provisions of Section 12 of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 212), and the regulations set forth at 29 C.F.R. Part 570 and further say that they will continue in compliance therewith.

VI.

Upon reconsideration of the amount of the civil money penalty assessed in this case, Plaintiff does hereby modify the notice of penalty by reducing the assessment of the civil money penalty to \$500.00.

VII.

Respondents hereby withdraw their exception to the assessment of the civil money penalty, and agree to accept the modified penalty as final and binding, and have tendered payment of \$500.00 to plaintiff.

VIII.

Any order entered in accordance with this consent findings shall, pursuant to 29 C.F.R. 18.9(b)(1), have the same force and effect as an order made after full hearing.

IX.

The entire record upon which any final order may be based shall, pursuant to the provisions of Departmental Regulations at 29 C.F.R. 18.9(b)(2), consist of the January 21, 2004 notice of penalty, as modified herein, and these consent findings.

X.

The signing of this consent findings waives any claim either party has to costs and/or attorney fees.

All further procedural rights provided by 29 C.F.R. Part 580, and any rights to contest and the validity of the consent findings or any order issued pursuant hereto are hereby waived, (29 C.F.R. 18.9(b)(3) and (4)).

After reviewing the Consent Findings, I conclude that this settlement is in the best interests of all of the parties and it is therefore **ORDERED** that the Consent Findings shall be, and the same hereby are **APPROVED** pursuant to the provisions of 20 CFR Part 18.9.

SO ORDERED.

A

COLLEEN A. GERAGHTY
Administrative Law Judge

Boston, Massachustts